

# Late Backup

ORDINANCE NO.

- Revised -  
10.20 am 12/6/07  
#45

## AN ORDINANCE ADDING A NEW ARTICLE 6 TO CHAPTER 2-7 OF THE CITY CODE RELATING TO ANTI-LOBBYING AND PROCUREMENT.

### BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

**PART 1.** Chapter 2-7 is amended to add a new article 6 to read:

#### ARTICLE 6. ANTI-LOBBYING AND PROCUREMENT.

##### § 2-7-101 DEFINITIONS.

In this article:

- (1) **AUTHORIZED CONTACT PERSON** means the person designated in a City solicitation as the contact for questions and comments regarding the solicitation.
- (2) **NO-CONTACT PERIOD** means the period of time from the date of issuance of the solicitation until a contract is executed. If the City withdraws the solicitation or rejects all responses with the stated intention to reissue the same or similar solicitation for the same or similar project, the no-contact period continues during the time period between the withdrawal and reissue.
- (3) **RESPONSE** means a response to a solicitation and includes a bid, a quote, a request for proposal response or a statement of qualifications.
- (4) **RESPONDENT** means a person responding to a City solicitation including a bidder, a quoter, responder, or a proposer. The term "respondent" also includes:
  - (a) an owner, officer, employee, contractor, lobbyist, subsidiary, joint enterprise, partnership, or other representative of a respondent;
  - (b) a person or representative of a person that is involved in a joint venture with the respondent, or a subcontractor in connection with the respondent's response; and
  - (c) a respondent who has withdrawn a response or who has had a response rejected or disqualified by the City.

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(5) REPRESENTATION means a communication related to a response to a council member, official, employee, or agent of the City which:

- (a) provides information about the response;
- (b) advances the interests of the respondent;
- (c) discredits the response of any other respondent;
- (d) encourages the City to withdraw the solicitation;
- (e) encourages the City to reject all of the responses; or
- (f) conveys a complaint about a particular solicitation.

(6) SOLICITATION includes an invitation for bids, a request for proposals, a request for quotations, and a request for qualifications.

#### **§2-7-102 FINDINGS; PURPOSE.**

(A) The Council finds that it is in the City's interest:

- (1) to provide the most fair, equitable, and competitive process possible for selection among potential vendors in order to acquire the best and most competitive goods and services; and
- (2) to further compliance with State law procurement requirements.

(B) The Council intends that:

- (1) each response is considered on the same basis as all others; and
- (2) respondents have equal access to information regarding a solicitation, and the same opportunity to present information regarding the solicitation for consideration by the City.

#### **§2-7-103 RESTRICTION ON CONTACTS.**

(A) During a no-contact period, a respondent shall make a representation only through the authorized contact person.

(B) If during the no-contact period, a respondent makes a representation to a member of the City Council, a member of a City board, or any other official, employee, or agent of the City, other than to the authorized contact person for the solicitation, the respondent's response is disqualified from further consideration except as permitted in this

1 article. This prohibition also applies to a vendor that makes a  
2 representation and then becomes a respondent.

3 (C) The prohibition of a representation during the no-contact period applies  
4 to a representation initiated by a respondent, and to a representation  
5 made in response to a communication initiated by a member of the City  
6 Council, member of a City board, or any other official, employee, or  
7 agent of the City other than the authorized contact person.

8 (D) If the City withdraws a solicitation or rejects all responses with a stated  
9 intention to reissue the same or similar solicitation for the same or  
10 similar project, the no-contact period shall expire after the sixtieth day  
11 after the date the solicitation is withdrawn or all responses are rejected if  
12 the solicitation has not been reissued during the sixty day period.

13 (E) This section does not apply to a representation:

14 (1) made at a meeting convened by the authorized contact person to  
15 evaluate responses;

16 (2) required by Financial Services Department protest procedures for  
17 vendors;

18 (3) made at a Financial Services Department protest hearing;

19 (4) provided to the Small & Minority Business Resources Department in  
20 order to obtain compliance with Chapter 2-9 (Minority-Owned and  
21 Female Owned Business Enterprise Procurement Program);

22 (5) made to the City Risk Management coordinator about insurance  
23 requirements for a solicitation; and

24 (6) made in public at a meeting held under the Texas Open Meetings  
25 Act.

26 **§2-7-104 PERMITTED REPRESENTATIONS.**

27 (A) If a respondent seeks to make a representation to a City official,  
28 employee, or agent during the no-contact period, the respondent shall  
29 submit the representation in writing only to the authorized contact  
30 person. The authorized contact person shall distribute the written  
31 representation in accordance with the terms of the particular solicitation.  
32 This subsection does not permit a respondent to amend or add  
33 information to a response after the response deadline.

1 (B) If a respondent seeks to make a complaint about a particular solicitation  
2 to a member of the City Council or a member of a City board, the  
3 respondent should include the complaint in his written representation to  
4 the authorized contact person. The authorized contact person shall  
5 distribute the complaint to members of the City Council or members of  
6 the City board, to the Director of the Department that issued the  
7 solicitation, and to all respondents of the particular solicitation.

8 (C) If a respondent makes a written inquiry regarding a solicitation, the  
9 authorized contact person shall provide a written answer to the inquiry  
10 and distribute the inquiry and answer to all respondents of the particular  
11 solicitation.

12 (D) If a respondent is unable to obtain a response from the authorized contact  
13 person, the respondent may contact the Director of the Public Works  
14 Department or Purchasing Officer as appropriate.

15 **§2-7-105 NOTICE.**

16 (A) An employee preparing a solicitation shall include a notice in the  
17 solicitation that advises respondents of the requirements of this article,  
18 including a notice that if any official, employee or agent of the City,  
19 other than the authorized contact person, approaches a respondent for  
20 response or solicitation information during the no-contact period, the  
21 respondent is at jeopardy if he or she makes any representation in  
22 response.

23 (B) When a solicitation is issued that requires Council action, the authorized  
24 contact person for that solicitation shall notify in writing each City  
25 Council member that the no-contact period for that solicitation is in  
26 effect.

27 (C) When a solicitation is issued that will be reviewed by a City board, the  
28 authorized contact person for that solicitation shall notify in writing each  
29 member of the board that the no-contact period for that solicitation is in  
30 effect.

31 **§2-7-106 DISCLOSURE OF PROHIBITED REPRESENTATION.**

32 (A) If a City official or employee receives a representation during the no-  
33 contact period for a solicitation, the City official or employee shall  
34 notify in writing the authorized contact person for that solicitation as  
35 soon as practicable. Notification to the authorized contact person must

1 be made using a form prescribed by the City and include any supporting  
2 documentation.

3 (B) During the no-contact period, a City employee, except for the authorized  
4 contact person, shall not solicit a representation from a respondent.

5 **§2-7-107 ENFORCEMENT.**

6 (A) If the authorized contact person for a solicitation finds that a respondent  
7 has made a prohibited representation during the no-contact period, the  
8 authorized contact person shall document his findings in a report and  
9 disqualify the respondent.

10 (B) The Financial Services Department and Public Works Department shall  
11 adopt rules to administer and enforce this article. The rules must  
12 include the provision of written notice of disqualification to the  
13 respondent, and a process to protest a disqualification.

14 **§ 2-7-108 CONTRACT VOIDABLE.**

15 If a contract is awarded to a respondent who has violated this article, the contract is  
16 voidable by the City.

17 **§2-7-109 DEBARMENT.**

18 (A) If a respondent violates this article more than once in a three year  
19 period, the Purchasing Officer shall debar a respondent from the sale of  
20 goods or services to the City for a period not to exceed three years,  
21 provided the respondent is given written notice and a hearing in  
22 advance of the debarment.

23 (B) The Financial Services Department shall adopt rules to administer and  
24 enforce this section. The rules must include a hearing process with  
25 written notice to the respondent.

26 **§2-7-110 NO CRIMINAL PENALTY.**

27 Section 1-1-99 does not apply to this article.

28 **PART 2.** This ordinance takes effect on \_\_\_\_\_, 2007.

**PASSED AND APPROVED**

\_\_\_\_\_, 2007

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Will Wynn  
Mayor

**APPROVED:**

\_\_\_\_\_  
David Allan Smith  
City Attorney

**ATTEST:**

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Shirley A. Gentry  
City Clerk

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